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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,921	03/13/2006	Stephen B. Murphy	103068-0003U	7285
24267	7590	04/29/2010	EXAMINER	
CESARI AND MCKENNA, LLP			DANEKA, RENEE A	
88 BLACK FALCON AVENUE			ART UNIT	PAPER NUMBER
BOSTON, MA 02210			3736	
MAIL DATE		DELIVERY MODE		
04/29/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/565,921

**Examiner**

Renee Danega

**Applicant(s)**

MURPHY, STEPHEN B.

**Art Unit**

3736

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED **16 April 2010** FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 6 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 3-14

Claim(s) withdrawn from consideration: 15-21.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

/Max Hindenburg/

Supervisory Patent Examiner, Art Unit 3736

Continuation of 11. does NOT place the application in condition for allowance because: Sarin is aimed at defining an AP plane, and then tracking new points relative to the plane to determine orientation and rotation transformations based on an angle as discussed in [0052] based on an original orientation [0051]. Sarin teaches the measured parameters can be modeled in a coordinate system on a computer [0049] taken to be an image, albeit not a created from a fluoroscopy technique. While Sarin discloses that the method can be performed without taking actual images of the hip as pointed out by applicant, creating models from actual images as performed in DiGioia would create a more realistic and accurate depiction of the surgery relating to the actual body structure aside from just the landmarks, DiGioia teaches that a fluoroscopic imaging device can be used or any number of known imaging devices to create the models from a series of two dimensional scans taken to be the single image (column 8, lines 59-66). DiGioia teaches the transformation registration data to be superimposed on the model originally created during operation (Figures 10a-b). Chen is merely relied upon to provide other known landmarks on the pelvis that may be useful. The point by applicant that DiGioia registers the dataset with actual landmarks on the patient with a navigation probe is well taken. However, the claims at this time are written in the inclusive form using the word "comprising". As such, they do not exclude such methods giving the claims their broadest reasonable interpretation. Examiner still believes claims 15-21 are drawn to a different invention than the claimed method and apparatus as they are drawn to an executable program for determining a coordinate system. As such, the status indicators on the claims should remain that they are withdrawn frm consideration .